



New South Wales

Central Coast Water Corporation Act 2006 No 105

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New South Wales

Central Coast Water Corporation Act 2006 No 105

Act No 105, 2006

An Act to provide for the constitution and functions of the Central Coast Water Corporation and for its establishment as a water supply authority under the *Water Management Act 2000*; and for other purposes. [Assented to 27 November 2006]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Central Coast Water Corporation Act 2006*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to this section.
- (2) The proclamation to commence section 4 (the ***proclamation constituting the Corporation***) may not be made except on the Minister's recommendation.
- (3) The Minister's recommendation for the proclamation constituting the Corporation may not be given unless each of the constituent councils:
 - (a) has, by a resolution of the council, approved a constitution for the Corporation, being a constitution that complies with section 8, and
 - (b) has, pursuant to a resolution of the council, entered into a voting shareholders' agreement with the other constituent council, being an agreement that complies with section 10, and
 - (c) has, pursuant to a resolution of the council, requested the making of the recommendation.
- (4) A constituent council may not take any action under subsection (3) except with the consent of the Minister and subject to such conditions, if any, as the Minister may specify and, for the avoidance of doubt, section 358 of the *Local Government Act 1993* does not apply to or in respect of any such action.
- (5) Schedule 7.2 [4] commences:
 - (a) except as provided by paragraph (b), on the first anniversary of the commencement of section 4, or
 - (b) if a proclamation commencing Schedule 7.2 [4] (the ***proclamation establishing the Corporation as a water supply authority***) is made before that anniversary, on the day appointed by that proclamation.
- (6) The day appointed by the proclamation establishing the Corporation as a water supply authority may be a day occurring any time before, or within 12 months after, the first anniversary of the commencement of section 4.

- (7) The proclamation establishing the Corporation as a water supply authority may not be made except on the Minister's recommendation.
- (8) The Minister's recommendation for the proclamation establishing the Corporation as a water supply authority may not be given unless each of the constituent councils has, pursuant to a resolution of the council, requested the making of the recommendation.

3 Definitions (cf State Owned Corporations Act 1989, section 3)

- (1) In this Act:

area of operations, in relation to the Corporation, means the area to which its operating licence applies, as referred to in section 38.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

Board, in relation to the Corporation, means the board of directors of the Corporation.

board, in relation to a subsidiary of the Corporation, means the board of directors of the subsidiary.

constituent council means the Gosford City Council or the Wyong Shire Council.

constitution means:

- (a) in relation to the Corporation, the constitution of the Corporation referred to in section 8, or
- (b) in relation to any of the Corporation's subsidiaries that is a company within the meaning of the *Corporations Act 2001* of the Commonwealth, the constitution of the company within the meaning of that Act, or
- (c) in relation to any of the Corporation's subsidiaries that is not such a company, the subsidiary's charter or memorandum and articles of association.

director means:

- (a) in relation to the Corporation, a member of the Board of the Corporation, and
- (b) in relation to a subsidiary of the Corporation, a member of the board of the subsidiary.

exercise a function includes perform a duty.

function includes power, authority and duty.

government entity means:

- (a) a State department, administrative office, instrumentality, agency, authority or entity, that is not a corporation, or
- (b) a division, branch or other part of such a department, office, instrumentality, agency, authority or entity.

IPART means the Independent Pricing and Regulatory Tribunal.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

operating licence means an operating licence granted under section 33 (1).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

subsidiary means a body corporate that would be a subsidiary of the Corporation if the Corporation were a company registered under the *Corporations Act 2001* of the Commonwealth.

the Corporation means the Central Coast Water Corporation referred to in section 4.

the State includes the Crown in right of New South Wales and the Government of New South Wales.

transfer order means an order referred to in section 32 (1) or (2) or section 41 (3).

voting shareholders, in relation to the Corporation or any of its subsidiaries, means the shareholders of the Corporation as referred to in section 7, in their capacities as shareholders in the Corporation.

water supply authority has the same meaning as it has in the *Water Management Act 2000*.

- (2) Notes included in this Act do not form part of this Act.

Part 2 Central Coast Water Corporation

Division 1 Establishment of the Corporation

4 Establishment of the Corporation (cf State Owned Corporations Act 1989, section 20A)

There is constituted by this Act a corporation under the name of the Central Coast Water Corporation.

5 Principal objectives of the Corporation (cf State Owned Corporations Act 1989, section 20E)

- (1) The principal objectives of the Corporation are as follows:
- (a) to promote the efficient delivery of water supply, sewerage and drainage services for the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply,
 - (b) to maximise water conservation, demand management and the use of recycled water,
 - (c) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable business, and
 - (ii) to maximise the net worth of the constituent councils' investment in the Corporation,
 - (d) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
 - (e) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.
- (2) Each of the principal objectives of the Corporation is of equal importance.

6 Status of the Corporation (cf State Owned Corporations Act 1989, section 20F)

The Corporation or any of its subsidiaries:

- (a) is not and does not represent the constituent councils or the State, and
- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is the Corporation, and

- (c) cannot render the constituent councils or the State liable for any debts, liabilities or obligations of the Corporation or any of its subsidiaries,
unless this or any other Act otherwise expressly provides.

7 Share capital, shares and shareholders (cf State Owned Corporations Act 1989, section 20H)

- (1) The Corporation is to have a share capital and shares as provided in its constitution.
- (2) The shareholders are to be the constituent councils.
- (3) Each shareholder must at all times have an equal number of shares in the Corporation.
- (4) Each shareholder must at all times be entitled to rights equal to those to which the other shareholder is entitled.

8 Constitution of the Corporation (cf State Owned Corporations Act 1989, section 20Q)

- (1) The Corporation is to have a constitution.
- (2) As far as practicable, the constitution of the Corporation is to have the same operation and effect in relation to the Corporation as the constitution of a company has in relation to the company.
- (3) The voting shareholders are responsible for ensuring that the constitution of the Corporation at all times contains provisions to the effect of:
 - (a) those set out in Schedule 1, and
 - (b) such others as are prescribed by the regulations.
- (4) The constitution of the Corporation may contain matters that, for a company, would be found in the *Corporations Act 2001* of the Commonwealth.
- (5) The constitution of the Corporation may make provision for or with respect to the provision, form, custody and use of the seal of the Corporation. Any such provisions have effect despite section 50 of the *Interpretation Act 1987*.
- (6) The constitution of the Corporation may contain provisions regarding the manner of alteration or replacement of the constitution.
- (7) The constitution of the Corporation may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (3) or any other provisions of this Act or the regulations.

9 Constitution of subsidiaries (cf State Owned Corporations Act 1989, section 20R)

- (1) The voting shareholders are responsible for ensuring that the constitution of every subsidiary at all times contains provisions to the effect of:
 - (a) those set out in Schedule 2, and
 - (b) such others as are prescribed by the regulations.
- (2) The provisions of subsection (1) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of the Corporations legislation generally.

Note. Section 5G (9) of the *Corporations Act 2001* of the Commonwealth provides that if a provision of a law of a State or Territory provides that a provision is included, or taken to be included, in a company's constitution, the provision is included in the company's constitution even though the procedures and other requirements of that Act are not complied with in relation to the provision.

However, section 5G (3) of the *Corporations Act 2001* of the Commonwealth provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.
- (3) The constitution of a subsidiary may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (1) or any other provisions of this Act or the regulations.

10 Voting shareholders' agreement

- (1) The constituent councils are to enter into an agreement as to the manner in which their rights as voting shareholders are to be exercised.
- (2) Such an agreement must make provision with respect to:
 - (a) the manner in which the voting shareholders are to make:
 - (i) any request referred to in section 2 (3) (c) or (8), and
 - (ii) any recommendation referred to in section 12 (3), and
 - (iii) any recommendation referred to in clause 2 (3) or 6 (2) of Schedule 3, and
 - (b) the procedures to be followed to resolve any disputes in relation to the exercise of the constituent councils' rights as voting shareholders, and
 - (c) such other matters as are prescribed by the regulations.

11 Application of Commonwealth Corporations Act 2001 (cf State Owned Corporations Act 1989, section 20G)

- (1) The Corporation is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation except to the extent specified by the regulations for the purposes of this subsection.

Note. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare the Corporation, and any matter relating to the Corporation (including the winding up of the Corporation), to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to:

- (a) the whole of the Corporations legislation, or
- (b) an Act, regulations or other instrument forming part of the Corporations legislation, or
- (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note. Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) A provision of the Corporations legislation that is the subject of any such declaration in the regulations has effect subject to the following modifications:

- (a) the provision applies as if the Corporation were a public company and a company limited by shares,
- (b) the provision applies as if shares in the Corporation held by the voting shareholders were shares held in the Corporation as a public company and a company limited by shares,
- (c) such other modifications as may be prescribed by the regulations.

- (4) Without limiting subsections (2) and (3) (c), any such regulations:
- (a) may specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
 - (b) may provide for the Australian Securities and Investments Commission (*ASIC*) to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) may specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
 - (d) may identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
 - (e) may specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (5) Subsection (2) does not apply to any provision of the Corporations legislation that applies to the Corporation as a law of the Commonwealth.
- (6) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

Division 2 Operation and management of the Corporation

12 Board of directors (cf State Owned Corporations Act 1989, section 20J)

- (1) There is to be a board of directors of the Corporation.
- (2) The Board is to consist of at least 3, but no more than 7, directors.
- (3) The directors are to be appointed by the Governor on the recommendation of the voting shareholders.

- (4) Each person recommended for appointment as a director must be a person who, in the opinion of the voting shareholders, will assist the Corporation to achieve its principal objectives.
- (5) No more than 2 directors may be appointed from the councillors and employees of the constituent councils (one from each council) and, in that event, the minimum number of directors is to be 5 (not 3).
- (6) The chief executive officer of the Corporation may, but need not, be appointed as a director.
- (7) The Board is accountable to the voting shareholders in the manner set out in Part 4 and in the constitution of the Corporation.
- (8) Schedule 3 has effect with respect to the constitution and procedure of the Board.

13 Chief executive officer (cf Energy Services Corporations Act 1995, clause 2 of Schedule 2)

- (1) The chief executive officer of the Corporation is to be appointed by the Board after consultation with the voting shareholders.
- (2) Schedule 4 has effect with respect to the chief executive officer.

14 Operation and management (cf State Owned Corporations Act 1989, section 20L)

- (1) All decisions relating to the operation of the Corporation are to be made by or under the authority of the Board.
- (2) The chief executive officer of the Corporation is, subject to subsection (1), responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.

15 Staff (cf State Owned Corporations Act 1989, section 20M)

- (1) The Corporation may employ such staff as it requires to exercise its functions.
- (2) The Corporation may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The regulations:
 - (a) subject to paragraph (b), may make provision for or with respect to the employment of the staff of the Corporation, including the conditions of employment and the discipline of any such staff, and

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- (b) must include provisions that have substantially the same effect in relation to the staff of the Corporation as the provisions of Part 4 of Chapter 11, and sections 348–350, of the *Local Government Act 1993* (provisions with respect to equal employment opportunity and merit appointment) have in relation to the staff of a council.
 - (4) Regulations relating to the conditions of employment or the discipline of staff:
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Corporation is a party, and
 - (b) have effect despite any determination of the Corporation under subsection (2).
 - (5) Except as provided by the regulations, this section does not apply to the appointment, employment or conditions of employment of the chief executive officer of the Corporation.
 - (6) Except as provided by the regulations, this section applies to a subsidiary of the Corporation (other than a company) and its staff in the same way as it applies to the Corporation and its staff.

16 Non-commercial activities (cf State Owned Corporations Act 1989, section 20N)

- (1) If the voting shareholders wish the Corporation to perform activities, or to cease to perform activities, or not to perform activities, in circumstances where the Board considers that it is not in the commercial interests of the Corporation to do so, they may, by written notice to the Board, direct the Corporation to do so in accordance with any requirements set out or referred to in the notice.
- (2) The Corporation is required to comply with any such direction.
- (3) The Corporation is entitled to be reimbursed, from money advanced by the constituent councils for the purpose, amounts equal to:
 - (a) the net cost of performing any such activities, including the cost of capital, and
 - (b) the net cost of complying with a direction to cease to perform or not to perform any such activities.
- (4) The amounts and times of payment of those amounts are as agreed between the constituent councils and the Corporation or (failing agreement) as determined by a suitably qualified person or persons nominated by the Minister.

- (5) The Corporation may be reimbursed, from money advanced by the constituent councils for the purpose, amounts not exceeding the estimated net amount of revenue forgone through ceasing to perform or not performing any such activities, as determined by the constituent councils having regard to such factors as they consider relevant in the circumstances.

17 Power of voting shareholders to notify Board of council policies (cf State Owned Corporations Act 1989, section 20O)

- (1) The voting shareholders may notify the Board, in writing, of a policy adopted by the constituent councils that is to apply to the Corporation and its subsidiaries, if the voting shareholders are satisfied that it is necessary to give the notification in the public interest.
- (2) The Board must ensure that the policy is carried out in relation to the Corporation and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.
- (3) Before giving a notification under this section, the voting shareholders:
 - (a) must consult with the Board, and
 - (b) must request the Board to advise the voting shareholders whether, in its opinion, carrying out the policy would not be in the best interests of the Corporation or any of its subsidiaries.
- (4) The Corporation may be reimbursed, from money advanced by the constituent councils for the purpose, amounts not exceeding the estimated net cost of complying with such a notification, or the estimated net amount of revenue forgone through complying with such a notification, as determined by the voting shareholders having regard to such factors as they consider relevant in the circumstances.
- (5) The voting shareholders are required to cause a notice to be published in the Gazette setting out the reasons why a notification was given under this section and why it is in the public interest that the notification be given.
- (6) A notice referred to in subsection (5) is to be published within one month after the notification is given.

18 Power of voting shareholders to give directions in public interest (cf State Owned Corporations Act 1989, section 20P)

- (1) The voting shareholders may give the Board a written direction in relation to the Corporation and its subsidiaries if they are satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.

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- (2) The Board must ensure that the direction is carried out in relation to the Corporation and must, as far as practicable, ensure that the direction is complied with in relation to its subsidiaries.
 - (3) Before giving a direction under this section, the voting shareholders:
 - (a) must consult with the Board, and
 - (b) must request the Board to advise the voting shareholders whether, in its opinion, complying with the direction would not be in the best interests of the Corporation or any of its subsidiaries.
 - (4) The Corporation may be reimbursed, from money advanced by the constituent councils for the purpose, amounts not exceeding the estimated net cost of complying with such a direction, or the estimated net amount of revenue forgone through complying with such a direction, as determined by the voting shareholders having regard to such factors as they consider relevant in the circumstances.
 - (5) The voting shareholders are required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.
 - (6) A notice referred to in subsection (5) is to be published within one month after the direction is given.

19 Dividends (cf State Owned Corporations Act 1989, section 20S)

- (1) The Corporation is to have a share dividend scheme, as provided in its constitution, in a form approved by the constituent councils.
- (2) The Board and the voting shareholders may agree that payments required to be made by the Corporation or any of its subsidiaries in respect of dividends will be applied in the purchase of shares by shareholders in the Corporation.
- (3) Dividends declared for the Corporation or any of its subsidiaries and payable to voting shareholders are to be paid to the constituent councils.

20 Tax-equivalents (cf State Owned Corporations Act 1989, section 20T)

- (1) The Corporation must from time to time pay to the constituent councils such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the Corporation if it were liable to pay taxes under the law of the Commonwealth.
- (2) The Corporation is not required to make payments under this section to the extent to which it is or becomes liable to pay any such taxes.

- (3) Payments are to be made under this section on such terms as the Tax Assessor determines to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the Corporation were liable to pay corresponding taxes under the law of the Commonwealth.
- (4) The Corporation and the constituent councils may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (3).
- (5) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements.
- (6) Any such determination of the Tax Assessor is final, and the constituent councils and the Corporation are required to make all the necessary payments and refunds to give effect to the determination.
- (7) The Minister may nominate any person or persons to be the Tax Assessor for the Corporation, and may revoke any such nomination.
- (8) This section applies to the subsidiaries of the Corporation in the same way as it applies to the Corporation, and (where relevant) applies to the Corporation and its subsidiaries as a group.
- (9) Amounts required to be paid under this section are called tax-equivalents.
- (10) In this section, *Tax Assessor*, in relation to the Corporation, means the person nominated for the time being under subsection (7) as the Tax Assessor for the Corporation.

21 Corporation's obligations not guaranteed by constituent councils (cf State Owned Corporations Act 1989, section 20U)

- (1) The obligations of the Corporation or any of its subsidiaries are not guaranteed by the constituent councils, except to the extent to which the Board and the constituent councils agree in writing.
- (2) The constituent councils may, after consultation with the Board, fix charges to be paid by the Corporation or any of its subsidiaries to the constituent councils in respect of an agreed guarantee, either generally or in so far as it relates to specified matters.
- (3) Payments by the Corporation or any of its subsidiaries to the constituent councils in respect of any such charges are required to be made at such times, and in such instalments, as the constituent councils determine.

22 State taxation (cf State Owned Corporations Act 1989, section 20V)

- (1) In this section:
exempt matter means:
 - (a) the issue of shares of the Corporation or any of its subsidiaries to the constituent councils, or
 - (b) the transfer of assets, rights or liabilities to the Corporation or any of its subsidiaries pursuant to a transfer order, or
 - (c) giving effect to any of the above.*tax* includes stamp duty and any other tax, duty, fee, levy or charge, but does not include tax-equivalents.
- (2) Tax under a law of the State is not payable in relation to:
 - (a) an exempt matter, or
 - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (3) The Treasurer or a person authorised by the Treasurer may, by a written instrument, certify that:
 - (a) a specified matter or thing is an exempt matter, or
 - (b) a specified thing was done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.
- (4) For all purposes and in all proceedings, a certificate under this section is conclusive evidence of the matters certified, except so far as the contrary is established.

23 Private corporations and subsidiaries (cf State Owned Corporations Act 1989, section 20W)

- (1) The Corporation may, subject to this section:
 - (a) form or participate in the formation of private corporations, and
 - (b) acquire interests in private corporations, and
 - (c) sell or otherwise dispose of interests in private corporations,but only if the activities or proposed activities of any such private corporation are related to the functions of the Corporation.
- (2) The Corporation or any of its subsidiaries may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.

- (3) The Corporation or any of its subsidiaries may not acquire or dispose of shares of a company, or participate in any other transaction, resulting in the company becoming or ceasing to be a subsidiary, without the prior written approval of the voting shareholders.
- (4) In seeking the approval of the voting shareholders, the Corporation or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations.
- (5) In this section, *private corporation* means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth formed in or outside New South Wales.

24 Acquisition and disposal of assets, investments and liabilities (cf State Owned Corporations Act 1989, section 20X)

- (1) The Corporation or any of its subsidiaries may not acquire or dispose of fixed assets or investments, including shares in a company, without the prior written approval of the voting shareholders:
 - (a) if the total assets and investments being acquired or disposed of (together with any other such acquisitions or dispositions during the last 12 months) represent an amount in excess of the prescribed percentage of the written down value of the Corporation's consolidated fixed assets and investments as disclosed in its last audited financial report, or
 - (b) if it could reasonably be expected that the inclusion or exclusion, respectively, of the total current year's profit or loss of such acquisition or disposition (together with any other such acquisitions or dispositions during that year) would result in an increase in or diminution of the Corporation's consolidated pre-tax operating profit or loss for the year of acquisition or disposal in excess of the prescribed percentage compared with that consolidated pre-tax operating profit or loss disclosed in its last audited financial report.
- (2) The amount referred to in subsection (1) (a) is to be calculated by reference to:
 - (a) in the case of an acquisition to which this section applies, the cost price of the asset or investment, or
 - (b) in the case of a disposition to which this section applies, the book value of the consideration or disposal, whichever is the greater.
- (3) The Corporation or any of its subsidiaries may not acquire or dispose of any assets or liabilities, in contravention of any requirements of the regulations.

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- (4) In seeking the approval of the voting shareholders under this section, the Corporation or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations.
 - (5) The *prescribed percentage* is 10 per cent or such other percentage as is prescribed by the regulations.
 - (6) All or any specified requirements of subsections (1) and (2) do not apply in such circumstances as are specified in a written notice given to the Corporation or a subsidiary of the Corporation by the voting shareholders.
 - (7) The voting shareholders may not give such a notice unless satisfied that the requirements are incapable of application to the Corporation or subsidiary in the circumstances or would apply to it in a clearly inappropriate manner.
 - (8) The voting shareholders may, by written notice, direct the Corporation or its subsidiaries not to dispose of any specified asset.

25 Sale or disposal of main undertaking (cf State Owned Corporations Act 1989, section 20Y)

- (1) None of the main undertakings of the Corporation, and none of the main undertakings of any of its subsidiaries, may be sold or disposed of except with the prior written approval of the voting shareholders.
- (2) The main undertakings are as specified in the most recent statement of corporate intent of the Corporation.

Division 3 Legal capacity and powers of the Corporation

26 Interpretation (cf State Owned Corporations Act 1989, section 20Z)

- (1) In this Division:
officer of the Corporation means:
 - (a) a director of the Corporation, or
 - (b) the chief executive officer of the Corporation, or
 - (c) an employee of the Corporation.*restriction* includes prohibition.
- (2) In this Division:
 - (a) a reference to the doing of an act by the Corporation includes a reference to the making of an agreement by the Corporation and a reference to a transfer of property to or by the Corporation, and
 - (b) a reference to power includes a reference to legal capacity.

27 Objects of Division (cf State Owned Corporations Act 1989, section 20ZA)

- (1) The objects of this Division include:
 - (a) providing that the doctrine of ultra vires does not apply to the Corporation, and
 - (b) ensuring that the Corporation gives effect to any restrictions on its objects or powers, but without affecting the validity of its dealings with outsiders.
- (2) This Division is to be construed and have effect accordingly.

28 General powers of the Corporation (cf State Owned Corporations Act 1989, section 20ZB)

- (1) The Corporation has, for or in connection with the performance of its functions, all the powers of a natural person, including for example, the power:
 - (a) to enter into contracts, and
 - (b) to acquire, hold, dispose of and deal with property, and
 - (c) to appoint agents and attorneys, and
 - (d) to charge, and fix terms, for goods, services and information supplied by it, and
 - (e) to engage consultants, and
 - (f) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting subsection (1), the Corporation has the powers that are conferred on it by or under this or any other Act.
- (3) The Corporation may exercise its powers within or outside the State.
- (4) Without limiting subsection (3), the Corporation may exercise its powers outside Australia.
- (5) The fact that the doing of an act by the Corporation would not be, or is not, in its best interests does not affect its legal capacity to do the act.

29 Restrictions on the Corporation (cf State Owned Corporations Act 1989, section 20ZC)

- (1) Section 28 has effect in relation to the Corporation subject to any restrictions on the Corporation's powers expressly imposed by or under this or any other Act.
- (2) Section 28 also has effect in relation to the Corporation subject to any restrictions expressly imposed by:
 - (a) the Corporation's constitution, or

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- (b) any relevant statement of corporate intent of the Corporation, or
 - (c) any relevant directions, notifications or approvals given to the Corporation by the voting shareholders.
- (3) If the Corporation:
- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2), or
 - (b) does an act otherwise than in pursuance of its objects or functions set out in this Act,
- the Corporation contravenes this subsection.
- (4) The exercise of the power mentioned in subsection (3) (a), or the act mentioned in subsection (3) (b), is not invalid merely because of the contravention.
- (5) An officer of the Corporation who is involved in the contravention contravenes this subsection.
- (6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).
- (7) The Corporation or officer of the Corporation is not guilty of an offence merely because of the relevant contravention.
- (8) The fact that:
- (a) by exercising the power mentioned in subsection (3) (a), or doing the act as mentioned in subsection (3) (b), the Corporation contravened, or would contravene, subsection (3), or
 - (b) by doing a particular act, an officer of the Corporation contravened, or would contravene, subsection (5),
- may be asserted or relied on only in proceedings between the voting shareholders and officers of the Corporation.

30 Persons having dealings with the Corporation or property (cf State Owned Corporations Act 1989, section 20ZD)

- (1) A person having dealings with the Corporation is entitled to make, in relation to those dealings, the assumptions referred to in subsection (3). In any proceedings relating to those dealings, any assertion by the Corporation that the matters that the person is so entitled to assume were not correct must be disregarded.

- (2) A person having dealings with another person (*the apparent owner*) who has acquired or purports to have acquired title to property from the Corporation (whether directly or indirectly) is entitled to make, in relation to the acquisition or purported acquisition of title from the Corporation, the assumptions referred to in subsection (3). In any proceedings in relation to those dealings, any assertion by the Corporation or by the apparent owner that the matters that the person is so entitled to assume were not correct must be disregarded.
- (3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are:
- (a) that, at all relevant times, this Act has been complied with, and
 - (b) that, at all relevant times, the Corporation's constitution has been complied with, and
 - (c) that a person who appears from publicly available information to be a director, the chief executive officer or a secretary of the Corporation has been duly appointed and has authority to exercise the functions customarily exercised by a director, by the chief executive officer or by a secretary, as the case may be, of a body carrying on a business of the kind carried on by the Corporation, and
 - (d) that a person who is held out by the Corporation to be an officer or agent of the Corporation has been duly appointed and has authority to exercise the functions customarily exercised by an officer or agent of the kind concerned, and
 - (e) that an officer or agent of the Corporation who has authority to issue a document on behalf of the Corporation has authority to warrant that the document is genuine and that an officer or agent of the Corporation who has authority to issue a certified copy of a document on behalf of the Corporation has authority to warrant that the copy is a true copy, and
 - (f) that a document has been duly sealed by the Corporation if it bears what appears to be an impression of a seal of the Corporation and the sealing of the document appears to be attested by a person who, because of paragraph (c), may be assumed to be a director of the Corporation or the Corporation's chief executive officer, and
 - (g) that the directors, chief executive officer, employees and agents of the Corporation have properly performed their duties to the Corporation.

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- (4) This section does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:
- (a) the person has actual knowledge that the assumption is not correct, or
 - (b) the person's connection or relationship with the Corporation is such that the person ought to know that the assumption is not correct.
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption:
- (a) if the assumption is in relation to dealings with the Corporation, subsection (1) does not apply to any assertion by the Corporation in relation to the assumption, or
 - (b) if the assumption is in relation to an acquisition or purported acquisition from the Corporation of title to property, subsection (2) does not apply to any assertion by the Corporation or another person in relation to the assumption.

31 Effect of fraud (cf State Owned Corporations Act 1989, section 20ZE)

- (1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that any person:
- (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates, or
 - (b) has forged a document that appears to have been sealed on behalf of the Corporation.
- (2) However, the person is not entitled to make the assumption if the person has actual knowledge of that fraudulent action or forgery.

Division 4 Transfer of staff, assets, rights and liabilities

32 Transfer of staff, assets, rights and liabilities (cf State Water Corporation Act 2004, section 10)

- (1) A constituent council may, by order in writing, transfer to the Corporation such of its staff as are specified or referred to in the order.
- (2) The Minister may, by order in writing, transfer to the Corporation such of a constituent council's assets, rights and liabilities as are specified or referred to in the order.
- (3) A transfer order under subsection (2) may not be made unless the relevant constituent council has consented to the transfer.

- (4) Such consent is required only in respect of:
 - (a) a transfer order made during the period of 3 years commencing on the day on which section 4 commences, or
 - (b) if the Minister, by order in writing, extends that period, a transfer order made during that period as so extended.
- (5) The period of 3 years referred to in subsection (4) (a) may be extended to no more than 5 years by an order under subsection (4) (b).
- (6) The fee simple in land that comprises the bed of any river, lake or estuary is not to be transferred to the Corporation under this section unless the Minister administering the *Crown Lands Act 1989* has been consulted in relation to the transfer.
- (7) Subsection (6) does not prevent the transfer to the Corporation of the ownership of any works installed in or on the bed of any river, lake or estuary.
- (8) An order under this section may be made on such terms and conditions as are specified or referred to in the order.
- (9) Schedule 5 applies to any transfer of staff, assets, rights or liabilities under this section.

Part 3 Operating licences

33 Grant of operating licence (cf State Water Corporation Act 2004, section 11)

- (1) The Minister may grant an operating licence to the Corporation to enable the Corporation, in accordance with this Act, to carry out its functions including, in particular, such functions with respect to:
 - (a) the provision of water supply or sewage management services, or
 - (b) the construction, maintenance or operation of water supply works, sewage works or drainage works,as are delegated to it by the constituent councils or as are exercisable by it in its capacity as a water supply authority.
- (2) Except to the extent to which this Act expressly provides, nothing in an operating licence limits the requirements imposed by or under any other Act or law with respect to the functions referred to in subsection (1) (a) and (b).

34 Terms and conditions of operating licences (cf Sydney Water Act 1994, section 14)

- (1) An operating licence is subject to the terms and conditions determined by the Minister, which must include terms or conditions under which the Corporation:
 - (a) is required to ensure that its water supply and sewage management services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, pricing and other matters determined by the Minister and set out in the operating licence, and
 - (b) is required to belong to an industry ombudsman scheme approved by the Minister for the purposes of this Act, and
 - (c) is required to compile indicators of the direct impact on the environment of the Corporation's activities:
 - (i) to enable preparation of an annual report on the Corporation's performance, and
 - (ii) to provide information for a year to year comparison in relation to the Corporation's performance in this area.
- (2) The terms and conditions of the operating licence are to make provision for the preparation of operational audits by IPART.
- (3) The regulations may make provision for or with respect to the establishment and operation of the industry ombudsman scheme referred to in subsection (1) (b).

- (4) Nothing in this section enables an operating licence to authorise or require the Corporation:
- (a) to construct, operate, manage or maintain water supply or sewage management works, or
 - (b) to provide water supply and sewage management services, or
 - (c) to provide, operate, manage or maintain a stormwater drainage system,
- on, or for the benefit of, land situated outside its area of operations.
- (5) While the Corporation is a water supply authority:
- (a) its exercise of functions under the *Water Management Act 2000* is subject to the terms and conditions of its operating licence, and
 - (b) its exercise of functions under its operating licence is not limited by section 293 (2) of that Act, and
 - (c) it is not subject to section 294 of that Act.

35 Amendment of operating licence

- (1) The Minister may amend or substitute the Corporation's operating licence or impose, amend or revoke conditions of the operating licence.
- (2) The Minister is to consult with the Corporation before taking action under subsection (1).

36 Term of operating licence (cf Sydney Water Act 1994, section 17)

- (1) The initial term of the Corporation's operating licence is to be for a maximum of 2 years, as determined by the Minister.
- (2) After the initial term, the Minister may renew the Corporation's operating licence for a maximum of 5 years at a time.
- (3) The operating licence may be renewed even if its term has expired.

37 Annual licence fees

The Minister may, as a condition of the Corporation's operating licence, require the Corporation to pay to the Minister, for payment into the Consolidated Fund, such annual licence fee as may be determined by the Minister.

38 Area covered by operating licence (cf Sydney Water Act 1994, section 18)

The Corporation's operating licence applies to the area comprising the local government areas of each of the constituent councils.

39 Contravention of operating licence (cf Sydney Water Act 1994, section 19)

- (1) If, in the opinion of the Minister, the Corporation contravenes its operating licence, the Minister may cause a notice to be served on the Corporation requiring it to rectify the contravention within a specified period.
- (2) If, in the opinion of the Minister, the Corporation contravenes its operating licence, and whether or not a notice has been served under subsection (1) or the period specified in the notice has ended, the Minister may direct that either of the following is to apply:
 - (a) a letter of reprimand is to be served on the Corporation,
 - (b) the Corporation is to pay a monetary penalty (not exceeding \$1 million) in an amount to be determined by the Minister.
- (3) The fact that the Minister has directed that action be taken under this section does not prevent the Minister directing that the same or other action under this section be taken if the contravention continues or a fresh contravention occurs.
- (4) The operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.
- (5) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

40 Enforcement of operating licence by IPART (cf Sydney Water Act 1994, section 19A)

- (1) IPART may impose a monetary penalty on the Corporation.
- (2) IPART may, instead of imposing a monetary penalty, require the Corporation to take such action as IPART considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) IPART may not require action to be taken under subsection (2) by the Corporation if the cost of that action would exceed the monetary penalty that IPART could impose under this section on the Corporation.
- (4) If IPART requires information to be sent to a customer under subsection (2), the Corporation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the Corporation or, if the Corporation is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the Corporation has knowingly contravened its operating licence.

- (6) The monetary penalty that IPART may impose under this section must not exceed \$500,000 for the first day on which the contravention occurs and a further \$20,000 for each subsequent day (not exceeding 25 days) on which the contravention continues.
- (7) IPART must not take action under this section unless:
 - (a) IPART has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
 - (b) IPART has considered the action that the Corporation has taken or is likely to take in respect of the contravention and the cost to the Corporation in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) IPART is required to consider the seriousness of the contravention concerned in determining whether to impose a monetary penalty under this section.
- (9) IPART must not take action under this section unless:
 - (a) notice of the proposed action has been given to the Corporation, and
 - (b) the Corporation has been given a reasonable opportunity to make submissions with respect to the proposed action, and
 - (c) IPART has given due consideration to any such submissions.
- (10) IPART must not take action under this section in respect of a contravention if any action has already been taken under section 39 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 39 in respect of a contravention, whether or not IPART has already taken action under this section in respect of the contravention.
- (12) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

41 Cancellation of operating licence (cf Sydney Water Act 1994, section 20)

- (1) The Corporation's operating licence may be cancelled by the Minister, but only if:
 - (a) the Corporation for any reason ceases, otherwise than as authorised by the operating licence, to do the things referred to in section 33 (1) (a) or (b), or any of them, in its area of operations, or

- (b) the Corporation:
 - (i) is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, and
 - (ii) has not, within the time specified by the Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled, or
 - (c) the Corporation is an externally-administered body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (d) the Corporation has been convicted on more than 3 occasions within a period of 12 months of offences that are punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, imprisonment for 12 months or more.
- (2) A notice under section 39 can be regarded also as a notice for the purposes of subsection (1) (b).
 - (3) If the Corporation's operating licence is cancelled under this section, the Minister may, by order in writing, transfer to either or both of the constituent councils any specified staff, assets, rights or liabilities of the Corporation that, in the opinion of the Minister, are necessary to enable the Corporation's functions, or any of them, to continue to be done.
 - (4) Schedule 5 applies to any transfer of staff, assets, rights or liabilities under this section.

Part 4 Accountability

42 Statement of corporate intent: timetable and procedure (cf State Owned Corporations Act 1989, section 21)

- (1) The Board must prepare and submit to the voting shareholders a draft written statement of corporate intent not later than one month after the commencement of each financial year.
- (2) The Board must consider any comments on the draft statement of corporate intent that are made to it by the voting shareholders within 2 months after the commencement of the financial year.
- (3) The Board must consult in good faith with the voting shareholders following communication to it of the comments, make such changes to the statement as are agreed between the voting shareholders and the Board and deliver the completed written statement to the voting shareholders within 3 months after the commencement of the financial year.
- (4) The statement may not, before it is laid before both Houses of Parliament, be published or made available to the public without the prior approval of the Board and the voting shareholders.
- (5) The statement may be modified at any time by the Board with the agreement of the voting shareholders.
- (6) If the Board, by written notice to the voting shareholders, proposes a modification of the statement, the Board may, within 14 days, make the modification unless the voting shareholders, by written notice to the Board, direct the Board not to make it.
- (7) The voting shareholders may, from time to time, by written notice to the Board, direct the Board to include in, or omit from, a statement of corporate intent any specified matters.
- (8) Before giving a direction under this section, the voting shareholders are to consult with the Board as to the matters to be referred to in the notice.
- (9) The Corporation is required to comply with any such direction.
- (10) At any particular time, the statement of corporate intent for the Corporation is the completed statement, with any modifications or deletions made in accordance with this Part.

43 Statement of corporate intent: contents (cf State Owned Corporations Act 1989, section 22)

Each statement of corporate intent is required to specify for the group comprising the Corporation and its subsidiaries, in respect of the financial year to which it relates and each of the 2 following financial years, the following information:

- (a) the objectives of the Corporation and of its subsidiaries,
- (b) the main undertakings of the Corporation and of its subsidiaries,
- (c) the nature and scope of the activities to be undertaken,
- (d) the accounting policies to be applied in the financial reports of the Corporation and of its subsidiaries,
- (e) the performance targets and other measures by which the performance of the Corporation and of its subsidiaries may be judged in relation to their stated objectives,
- (f) the kind of information to be provided to the voting shareholders by the Corporation during the course of those financial years, including the information to be included in each half-yearly and annual report,
- (g) such other matters as may be agreed on by the voting shareholders and the Board from time to time.

44 Half-yearly reports (cf State Owned Corporations Act 1989, section 23)

- (1) Within one month after the end of the first 6 months of each financial year (or such other period after the end of that half-year as may be agreed on by the Board and the voting shareholders), the Board is required to deliver to the voting shareholders a report of the operations of the Corporation and of its subsidiaries during that half-year.
- (2) Each report required by this section must include the information required by the statement of corporate intent to be included in it.

45 Annual reports and financial reports

- (1) The provisions of Divisions 2 and 3 of Part 3 of Chapter 13 of the *Local Government Act 1993* apply to and in respect of the Corporation in the same way as they apply to and in respect of a council.
- (2) Within 5 months after the end of each financial year, the Corporation must prepare a report as to its achievements with respect to the objectives and performance targets set out in its statement of corporate intent in relation to that year.

- (3) Each annual report is to include a section that:
 - (a) identifies any actual departures from those performance targets, and
 - (b) sets out the reasons for each of those departures.
- (4) Copies of the Corporation's annual report must be furnished to the Minister and to such other persons and bodies as are required by the regulations to be furnished with the report.

46 Special reports of Auditor-General (cf State Owned Corporations Act 1989, section 25)

- (1) The Auditor-General may make a special report regarding any matter arising from audit which in the opinion of the Auditor-General should be brought to the attention of Parliament.
- (2) The Auditor-General is required to present any such special report to the Legislative Assembly.

47 Information to be laid before Parliament (cf State Owned Corporations Act 1989, section 26)

- (1) The Minister is required to lay, or cause to be laid, the following before each House of Parliament:
 - (a) a copy of the constitution of the Corporation, within 14 sitting days after the date of the constitution or the date on which the Corporation came into being (whichever is the later),
 - (b) a copy of the constitution of each subsidiary of the Corporation, within 14 sitting days after the date of the constitution or the date on which the subsidiary became a subsidiary of the Corporation (whichever is the later),
 - (c) a copy of any change to the constitution of the Corporation or any of its subsidiaries, within 14 sitting days after the date of the change,
 - (d) a copy of the completed statement of corporate intent for the Corporation, within 14 sitting days after the date the voting shareholders received it,
 - (e) a copy of any modification to a completed statement of corporate intent for the Corporation made after a copy of the statement was laid before the House, within 14 sitting days after the date the modification was made,
 - (f) a copy of any notice given under section 42 (6) directing the Board not to make a modification of a statement of corporate intent, within 14 sitting days after the date the notice was given,

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- (g) a copy of any notice given under section 42 (7) directing the inclusion of matters in or the omission of matters from a statement of corporate intent, within 14 sitting days after the date the notice was given,
 - (h) a copy of each half-yearly and annual report of the Corporation, within 14 sitting days after the date the voting shareholders received it,
 - (i) a copy of any notice given by the voting shareholders under the constitution of the Corporation to the Board as to the amount of a dividend, within 14 sitting days after the date the notice was given,
 - (j) a copy of any written approval given by the voting shareholders under section 23, 24 or 25, within 14 sitting days after the date the approval was given,
 - (k) a copy of any notice given by the voting shareholders under section 24 (6), within 14 sitting days after the date the notice was given,
 - (l) a copy of any written instrument under section 22 (3), within 14 sitting days after the date the instrument was signed,
 - (m) a copy of any written direction under clause 12 of Schedule 6, within 14 sitting days after the direction was given.
- (2) The material referred to in subsection (1) relating to a statement of corporate intent must be accompanied by a statement as to whether or not the statement of corporate intent embodies any changes made to the description of the main undertakings of the Corporation or its subsidiaries.
 - (3) Before copies of material referred to in subsection (1) (d) or (e) relating to a statement of corporate intent are laid before the Houses of Parliament, the voting shareholders may delete any information of a commercially sensitive nature.
 - (4) The material referred to in subsection (1) (j) relating to an approval given under section 25 need not be laid before the Houses of Parliament so far as the approval relates to a transaction between any members of a group comprising the Corporation and its subsidiaries.
 - (5) The Corporation must ensure that the material referred to in subsection (1) is made available to the Minister in time to enable the Minister to comply with the requirements of that subsection.
 - (6) Compliance with subsection (5) is a condition of the Corporation's operating licence.

48 Procedure if Parliament not in session (cf State Owned Corporations Act 1989, section 27)

- (1) If a House of Parliament is not sitting when the Minister seeks to comply with any of the requirements of section 47, the Minister is required to present a copy of the material to the Clerk of the House.
- (2) If the Legislative Assembly is not sitting when the Auditor-General seeks to comply with any of the requirements of section 46, the Auditor-General is required to present a copy of the special report to the Clerk of the Legislative Assembly.
- (3) Material presented to the Clerk under this section:
 - (a) on presentation and for all purposes, is taken to have been laid before the House of Parliament, and
 - (b) is required to be printed by authority of the Clerk if it is a half-yearly or annual report of the Corporation, and
 - (c) may be printed by authority of the Clerk if it is material other than such a report, and
 - (d) if printed by authority of the Clerk, is for all purposes taken to be a document published by order or under the authority of the House, and
 - (e) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the material by the Clerk.

49 Other information to be supplied (cf State Owned Corporations Act 1989, section 29)

The Board must supply to the voting shareholders such information relating to the affairs of the Corporation or any of its subsidiaries as they from time to time request (whether or not the information is of a kind referred to in the statement of corporate intent).

50 Application of this Part where no subsidiaries (cf State Owned Corporations Act 1989, section 30)

If any provision of this Part is expressed to apply to the Corporation and its subsidiaries (or a group comprising the Corporation and its subsidiaries), the provision also applies to the Corporation if it has no subsidiaries.

Part 5 Independent Pricing and Regulatory Tribunal

51 Regulatory functions of IPART

- (1) The regulatory functions of IPART under this Act are as follows:
 - (a) the function of making recommendations under subsection (2),
 - (b) the function of monitoring and reporting under subsection (3),
 - (c) the auditing functions of IPART under subsection (4),
 - (d) the function of determining an operating licence fee (if any),
 - (e) the function of imposing monetary penalties or requiring other action to be taken under section 40,
 - (f) such other functions of IPART under this Act as are specified by the regulations for the purposes of this section.
- (2) IPART has the function of making recommendations to the Minister for or with respect to:
 - (a) the granting, amendment or cancellation of the Corporation's operating licence, and
 - (b) the imposition, amendment or cancellation of conditions in relation to the Corporation's operating licence, and
 - (c) action to be taken, and sanctions to be applied, in respect of a contravention of the Corporation's operating licence, and
 - (d) remedial action that may be warranted as a result of a contravention of the Corporation's operating licence.
- (3) IPART has the function of monitoring and reporting to the Minister on compliance by the Corporation with its operating licence.
- (4) IPART has such functions as may be conferred or imposed on it by the Corporation's operating licence in connection with operational audits of the Corporation.

52 Operational and other audits

- (1) IPART is to prepare operational audits of the Corporation at the times directed by the Minister.
- (2) The Minister may direct IPART to prepare the Corporation's operational audit of specified matters only.
- (3) IPART is to ensure that each operational audit of the Corporation is prepared in accordance with the Corporation's operating licence.

Part 6 Miscellaneous

53 Act binds Crown (cf State Owned Corporations Act 1989, section 31)

This Act binds the Crown.

54 Operation of Act (cf State Owned Corporations Act 1989, section 33)

- (1) A requirement of this Act that provisions be included in the constitution of a company does not have effect to the extent to which the requirement or the provisions are inconsistent with a law of the Commonwealth.
- (2) A requirement of this Act that provisions be inserted in the constitution of a company does not have effect to the extent to which the requirement or the provisions are inconsistent with a law of a place (other than New South Wales), if the company is a subsidiary of the Corporation and the company is or is to be incorporated under the law of that place.

55 Duties and liabilities of directors and other officers (cf State Owned Corporations Act 1989, section 33A)

- (1) Schedule 6 has effect.
- (2) The regulations may amend or replace Schedule 6.
- (3) Any such regulations:
 - (a) may confer jurisdiction on courts in relation to the duties and liabilities of directors and officers and associated matters, and
 - (b) may impose penalties not exceeding 500 penalty units or imprisonment not exceeding 5 years, or both.

56 Liability of directors and other officers in respect of particular obligations (cf State Owned Corporations Act 1989, section 33AA)

- (1) This section applies to the obligation of the Board to supply information requested of the Board under section 49.
- (2) A director of the Corporation does not, despite any other law, incur any personal liability for the compliance, or purported compliance, in good faith by the Board with an obligation to which this section applies.
- (3) An officer of the Corporation does not, despite any other law, incur any personal liability for his or her compliance, or purported compliance, in good faith with a direction or decision given or made by or on behalf of the Board for the purpose of complying with an obligation to which this section applies.
- (4) This section does not affect any other protection that a director or other officer would have for compliance, or purported compliance, with such an obligation.

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- (5) In this section, *officer* of the Corporation means:
- (a) a director of the Corporation, or
 - (b) the Corporation's chief executive officer, or
 - (c) any other person who is concerned, or takes part, in the Corporation's management.

57 Offences (cf State Owned Corporations Act 1989, section 33B)

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
- (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) The maximum penalty that may be imposed by a Local Court for an offence against this Act or the regulations is 50 penalty units or imprisonment for 12 months, or both.

58 Application of Public Finance and Audit Act 1983 (cf State Owned Corporations Act 1989, section 35A)

The *Public Finance and Audit Act 1983* does not apply in relation to the Corporation or any of its subsidiaries.

59 Application of Independent Commission Against Corruption Act 1988

(cf State Owned Corporations Act 1989, section 36)

For the purposes of the *Independent Commission Against Corruption Act 1988*:

- (a) the Corporation and its subsidiaries are public authorities, and
- (b) directors, officers and employees of the Corporation, or of its subsidiaries, are public officials.

60 Regulations (cf State Owned Corporations Act 1989, section 38)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 50 penalty units (in the case of an individual) and 100 penalty units (in any other case).

61 Amendment of other Acts

The Acts specified in Schedule 7 are amended as set out in that Schedule.

62 Savings and transitional provisions (cf State Owned Corporations Act 1989, section 39)

Schedule 8 has effect.

63 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions for inclusion in constitution of the Corporation

(Section 8)

(cf State Owned Corporations Act 1989, Schedule 6)

Provisions to the effect of the following provisions are to be included in the constitution of the Corporation. Words and expressions used in these provisions have the same meanings as in the *Central Coast Water Corporation Act 2006*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 1 to the *Central Coast Water Corporation Act 2006*, unless and until resolutions approving the alteration or addition have been passed by each of the constituent councils within the meaning of that Act.

2 Act to prevail

- (1) The provisions of the *Central Coast Water Corporation Act 2006* prevail over any inconsistent provisions of the constitution of the Corporation.
- (2) The Corporation is expressly prohibited from exercising any of its powers in contravention of any requirement of or under section 24 or 25 of the *Central Coast Water Corporation Act 2006*.

3 Shareholders

- (1) Only the constituent councils may hold shares in the Corporation's issued share capital.
- (2) A shareholder may not sell or otherwise dispose of shares in the Corporation.
- (3) The Board is accountable to the voting shareholders in the manner set out in Part 4 of the *Central Coast Water Corporation Act 2006* and in the constitution of the Corporation.
- (4) The Corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares.
- (5) Only the voting shareholders may cast votes.
- (6) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes.

4 Subsidiaries

- (1) The Corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.
- (2) The Corporation must ensure that the constitutions of its subsidiaries at all times contain provisions to the effect of those required by Schedule 2 to the *Central Coast Water Corporation Act 2006*.
- (3) The Corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its constitution (if any) and with the requirements of the *Central Coast Water Corporation Act 2006*.

Schedule 2 Provisions for inclusion in constitutions of subsidiaries

(Section 9)

(cf State Owned Corporations Act 1989, Schedule 7)

Provisions to the effect of the following provisions are to be included in the constitution of each subsidiary of the Corporation. Words and expressions used in these provisions have the same meanings as in the *Central Coast Water Corporation Act 2006*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 2 to the *Central Coast Water Corporation Act 2006*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *Central Coast Water Corporation Act 2006* prevail over any inconsistent provisions of the constitution of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of any requirement of or under section 24 or 25 of the *Central Coast Water Corporation Act 2006*.

3 Shareholders

- (1) A shareholder that is a constituent council may not sell or otherwise dispose of shares in the subsidiary otherwise than to the Corporation or a subsidiary of the Corporation.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary.
- (3) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the *Central Coast Water Corporation Act 2006* and in the constitution of the subsidiary.
- (4) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (5) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the Corporation.

4 Subsidiaries

- (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the Corporation.
- (2) The subsidiary must ensure that the constitutions of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 2 to the *Central Coast Water Corporation Act 2006*.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution (if any) and with the requirements of the *Central Coast Water Corporation Act 2006*.

5 Exercise of certain functions restricted to Corporation's area of operations

The subsidiary may not:

- (a) construct, operate, manage or maintain water supply or sewage management works, or
- (b) provide water supply and sewage management services, or
- (c) provide, operate, manage or maintain a stormwater drainage system,

on, or for the benefit of, land situated outside the Corporation's area of operations.

Schedule 3 Constitution and procedure of Board

(Section 12)

(cf State Owned Corporations Act 1989, Schedule 8)

1 Application of this Schedule

- (1) This Schedule applies in relation to the Board.
- (2) This Schedule applies only to the extent to which the constitution of the Corporation does not make provision for any matter dealt with in this Schedule. However, the constitution cannot override clause 4 or 6.

2 Chairperson

- (1) Of the directors of the Corporation, one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the Governor) to be appointed as Chairperson of the Board.
- (2) Such an appointment is to be made on the recommendation of the Minister following consultation with the voting shareholders.
- (3) The Governor, on the recommendation of the voting shareholders, may remove a director from the office of Chairperson of the Board at any time for any or no reason and without notice.
- (4) A person who is a director and Chairperson of the Board vacates office as Chairperson in the circumstances set out in the constitution of the Corporation or if the person:
 - (a) is removed from that office under this clause, or
 - (b) resigns that office by letter addressed to the voting shareholders, or
 - (c) ceases to be a director of the Corporation.

3 Deputies

- (1) The voting shareholders may, from time to time, appoint a person to be the deputy of a director of the Corporation, and the voting shareholders may revoke any such appointment.
- (2) A director's deputy may not be appointed from the councillors or employees of a constituent council unless the director was so appointed, as referred to in section 12 (5).
- (3) In the absence of a director, the director's deputy:
 - (a) is, if available, to act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a director of the Corporation.

- (4) The deputy of a director who is Chairperson of the Board does not have the director's functions as Chairperson, unless the constitution of the Corporation provides for this to happen.
- (5) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine in respect of the person.

4 Term of office of directors

Subject to this Schedule, a director of the Corporation holds office for such period (not exceeding 5 years) as may be specified in the director's instrument of appointment.

5 Remuneration

A director of the Corporation is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine.

6 Vacancy in office of director

- (1) The office of a director of the Corporation becomes vacant in the circumstances set out in the constitution of the Corporation or if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the voting shareholders, or
 - (d) is removed from office by the Governor under this clause or under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the end of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or

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- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor, on the recommendation of the voting shareholders, may remove a director of the Corporation from office at any time for any or no reason and without notice.

7 Filling of vacancy

If the office of a director of the Corporation becomes vacant, a person is, subject to this Act and the constitution of the Corporation, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of a director of the Corporation. A director is not, as a director, subject to that Act (except Chapter 5).
- (2) For the purposes of Chapter 5 of the *Public Sector Employment and Management Act 2002*:
- (a) the position of director of the Corporation is taken to be a statutory office, and
 - (b) in relation only to section 118 (7) of that Act, the Corporation is taken to be a State owned corporation.
- (3) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting any remuneration payable to the person under this Act as such a director.

9 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, the regulations and the constitution of the Corporation, to be as determined by the Board.

10 Quorum

The quorum for a meeting of the Board is, subject to the constitution of the Corporation, a majority of the directors for the time being.

11 Presiding director

- (1) The Chairperson of the Board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is (subject to the constitution of the Corporation) to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has (in accordance with the constitution of the Corporation) a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is (subject to the constitution of the Corporation) the decision of the Board.

13 Transaction of business otherwise than at ordinary meetings

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the Board for the time being. A resolution approved in writing by a majority of the directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and other directors have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations and the constitution of the Corporation, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among directors for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

14 First meeting

The voting shareholders may call the first meeting of the Board in such manner as they think fit.

Schedule 4 Chief executive officer

(Section 13)

(cf State Owned Corporations Act 1989, Schedule 9)

1 Term of office

Subject to this Schedule, the chief executive officer holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment.

2 Conditions of employment

The Board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.

3 Remuneration

The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may determine.

4 Performance agreements

The Board may require the chief executive officer to enter into performance agreements.

5 Acting chief executive officer

- (1) The Board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (2) The Board may remove a person from the office to which the person was appointed under this clause, at any time for any or no reason and without notice.
- (3) A person while acting in the office of chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of chief executive officer is regarded as an absence from office of the chief executive officer.

6 Removal from office

The voting shareholders may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only on the recommendation of the Board.

7 Effect of certain other Acts

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of the chief executive officer, and the chief executive officer is not subject to that Act (except Chapter 5).
- (2) For the purposes of Chapter 5 of the *Public Sector Employment and Management Act 2002*:
 - (a) the position of chief executive officer is taken to be a statutory office, and
 - (b) in relation only to section 118 (7) of that Act, the Corporation is taken to be a State owned corporation.

Schedule 5 Transfer of staff, assets, rights and liabilities

(Sections 32 and 41)

Part 1 Preliminary

1 Application and interpretation

- (1) This Schedule applies to any transfer of staff, assets, rights or liabilities pursuant to a transfer order.
- (2) In this Schedule:
 - (a) the person or body from which any staff, assets, rights or liabilities are transferred is called the *transferor*, and
 - (b) the person or body to which any staff, assets, rights or liabilities are transferred is called the *transferee*.

2 Date of transfer

A transfer order takes effect on the date specified in the order.

3 Confirmation of transfer

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities.
- (2) Such a notice is conclusive evidence of that transfer.

Part 2 Transfers of staff

4 Transfers generally

Transferred staff are regarded for all purposes as having become employees of the transferee, in accordance with the terms of the order, on the day specified in the order as being the day on which the transfer takes effect.

5 General saving of conditions of employment

Transferred staff are (until other provision is duly made under any Act or law) to be continued to be employed in accordance with any awards, agreements and determinations, and subject to any conditions, that would have applied to them had they not been transferred but instead remained as members of the staff of the transferor.

6 Saving of leave

Transferred staff retain any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in their employment with the transferor.

7 No payment out on transfer or dual benefits

- (1) Transferred staff are not entitled to receive any payment or other benefit merely because they cease to be members of staff of the transferor.
- (2) Transferred staff are not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

8 Security of employment and right of return

- (1) This clause applies to staff who are transferred to the Corporation from a constituent council pursuant to a transfer order under section 32 (1) (*eligible employees*).
- (2) The employment of an eligible employee must not be terminated on the grounds of redundancy during the period of 3 years following the date of the transfer except with the employee's agreement.
- (3) An eligible employee may, within the period of 3 years following the date of the transfer, apply for a position in the constituent council as if the employee were still an employee of that council.
- (4) An eligible employee who applies for such a position, or who is appointed to or employed in such a position, is, for the purposes of the *Local Government Act 1993*, the *Government and Related Employees Appeal Tribunal Act 1980* and the *Industrial Relations Act 1996*, to be taken to be an employee of the council in relation to the application, appointment or employment.
- (5) There is no right of appeal under the *Government and Related Employees Appeal Tribunal Act 1980*:
 - (a) for a person against the filling of a position in the organisation structure of the council by an eligible employee, or
 - (b) for an eligible employee against the filling of a position in the organisation structure of the council by another person.

Part 3 Transfers of assets, rights and liabilities

9 Vesting of undertaking in transferee

- (1) When any assets, rights or liabilities are transferred, the following provisions have effect:
 - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to:
 - (i) the transferor, or
 - (ii) any predecessor of the transferor,to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.
- (2) The operation of this Schedule is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.

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- (3) No attornment to the transferee by a lessee from the transferor is required.
 - (4) A transfer is subject to the terms and conditions of the order by which it is effected.

10 No compensation payable

No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the order giving rise to the transfer so provides.

11 Transfer of interests in land

- (1) A transfer order may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Act.

12 Consideration for vesting

The Minister may, by order in writing, specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.

Schedule 6 Duties and liabilities of directors and other officers

(Section 55)

(cf State Owned Corporations Act 1989, Schedule 10)

1 Disclosure of interests by directors

- (1) If a director of the Corporation has a direct or indirect interest in a matter being considered, or about to be considered, by the Board, the director must disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty: 100 penalty units.

- (2) The disclosure must be recorded in the minutes of the Board's meetings.

2 Voting by interested director

- (1) A director of the Corporation who has a material personal interest in a matter that is being considered by the Board must not:

- (a) vote on the matter, or
- (b) vote on a proposed resolution (*a related resolution*) under subclause (2) in relation to the matter (whether in relation to the director or another director), or
- (c) be present while the matter, or a related resolution, is being considered by the Board, or
- (d) otherwise take part in any decision of the Board in relation to the matter or a related resolution.

Maximum penalty: 100 penalty units.

- (2) Subclause (1) does not apply to the matter if the Board has at any time passed a resolution that:

- (a) specifies the director, the interest and the matter, and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

- (3) In determining whether a quorum is present at a meeting of the Board during a consideration of such a matter by the Board, only those directors are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter.

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- (4) The voting shareholders may, by each signing consent to a proposed resolution, deal with a matter if the Board cannot deal with it because of subclause (3).

3 Duty and liability of certain officers of the Corporation

- (1) In this clause:
officer of the Corporation means:
- (a) a director of the Corporation, or
 - (b) the Corporation's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the Corporation's management.
- (2) An officer of the Corporation must act honestly in the exercise of powers, and discharge of functions, as an officer of the Corporation.
Maximum penalty:
- (a) if the contravention is committed with intent to deceive or defraud the Corporation, creditors of the Corporation or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
 - (b) in any other case—100 penalty units.
- (3) In the exercise of powers and the discharge of functions, an officer of the Corporation must exercise the degree of care and diligence that a reasonable person in a like position in the Corporation would exercise in the Corporation's circumstances.
Maximum penalty: 100 penalty units.
- (4) An officer of the Corporation, or a person who has been an officer of the Corporation, must not make improper use of information acquired because of his or her position as an officer of the Corporation:
- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or
 - (b) to cause detriment to the Corporation.
- Maximum penalty: 500 penalty units or imprisonment for 5 years.
- (5) An officer of the Corporation must not make improper use of his or her position as an officer of the Corporation:
- (a) to gain, directly or indirectly, an advantage for himself or herself or another person, or
 - (b) to cause detriment to the Corporation.
- Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (6) If a person contravenes this clause in relation to the Corporation, the Corporation may recover from the person as a debt due to the Corporation:
- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit, and
 - (b) if the Corporation suffered loss or damage because of the contravention—an amount equal to the loss or damage.
- (7) An amount may be recovered from the person under subclause (6) whether or not the person has been convicted of an offence in relation to the contravention.
- (8) Subclause (6) is in addition to, and does not limit, the *Confiscation of Proceeds of Crime Act 1989*.
- (9) In determining for the purposes of subclause (3) the degree of care and diligence that a reasonable person in a like position in the Corporation would exercise in the circumstances of the Corporation concerned, regard must be had to:
- (a) the fact that the person is an officer of the Corporation, and
 - (b) the application of this Act to the Corporation, and
 - (c) relevant matters required or permitted to be done under this Act in relation to the Corporation,
- including, for example, any relevant directions, notifications or approvals given to the Corporation by the Corporation's voting shareholders or constituent councils.
- (10) Subclause (9) does not limit the matters to which regard may be had for the purposes of subclause (3).
- (11) This clause:
- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation, and
 - (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

4 Prohibition on loans to directors

- (1) The Corporation must not, whether directly or indirectly:
- (a) make a loan to a director, a spouse of a director or a relative of a director or spouse, or
 - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.

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- (2) Subclause (1) does not apply to the entering into by the Corporation of an instrument with a person mentioned in subclause (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the Corporation with members of the public.
- (3) A director of the Corporation who is knowingly concerned in a contravention of subclause (1) by the Corporation (whether or not in relation to the director) commits an offence.
Maximum penalty: 100 penalty units.
- (4) In this clause:
relative means:
- (a) a parent or remoter lineal ancestor, or
 - (b) a son, daughter or remoter issue, or
 - (c) a brother or sister.

5 Corporation not to indemnify officers

- (1) The Corporation must not:
- (a) indemnify a person who is or has been an officer of the Corporation against a liability incurred as an officer, or
 - (b) exempt a person who is or has been an officer of the Corporation from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the Corporation to do something that subclause (1) prohibits.
- (3) Subclause (1) does not prevent the Corporation from indemnifying a person against civil liability (other than a liability to the Corporation or a subsidiary of the Corporation) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent the Corporation from indemnifying a person against a liability for costs and expenses incurred by the person:
- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or
 - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) The Corporation may give an indemnity mentioned in subclause (3) or (4) only with the prior approval of the voting shareholders.
- (6) In this clause:
indemnify includes indemnify indirectly through one or more interposed entities.

officer of the Corporation means:

- (a) a director of the Corporation, or
- (b) the Corporation's chief executive officer, or
- (c) another person who is concerned, or takes part, in the Corporation's management.

6 Corporation not to pay premiums for certain liabilities of officers

- (1) The Corporation must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the Corporation against a liability:
 - (a) incurred by the person as an officer, and
 - (b) arising out of conduct involving:
 - (i) a wilful breach of duty in relation to the Corporation, or
 - (ii) without limiting subparagraph (i), a contravention of clause 3 (4) or (5).
- (2) Subclause (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.
- (3) An instrument is void so far as it insures a person against a liability in contravention of subclause (1).
- (4) In this clause:

officer of the Corporation means:

 - (a) a director of the Corporation, or
 - (b) the Corporation's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the Corporation's management.

pay includes pay indirectly through one or more interposed entities.

7 Director's duty to prevent insolvent trading

- (1) If:
 - (a) immediately before the Corporation incurs a debt:
 - (i) there are reasonable grounds to suspect that the Corporation will not be able to pay all its debts as and when they become due, or
 - (ii) there are reasonable grounds to suspect that, if the Corporation incurs the debt, it will not be able to pay all its debts as and when they become due, and

(b) the Corporation is, or later becomes, unable to pay all its debts as and when they become due,

a person who is a director of the Corporation, or takes part in the Corporation's management, at the time when the debt is incurred commits an offence.

Maximum penalty: 100 penalty units or imprisonment for 1 year.

(2) In a proceeding against a person for an offence against this clause, it is a defence if it is proved:

(a) that the debt was incurred without the person's express or implied authority or consent, or

(b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect:

(i) that the Corporation would not be able to pay all its debts as and when they became due, or

(ii) that, if the Corporation incurred that debt, it would not be able to pay all its debts as and when they became due, or

(c) that the person took all reasonable steps to prevent the Corporation from incurring the debt, or

(d) in the case of a director—that the person did not take part at the time in the Corporation's management because of illness or for some other good cause.

8 Court may order compensation

(1) If a person is found guilty of an offence against clause 7 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by the Corporation, the Supreme Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the Corporation of the amount required to satisfy the part of the Corporation's debts that the Court considers proper.

(2) This clause does not affect any rights of a person to indemnity, subrogation or contribution.

(3) This clause:

(a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation, and

(b) does not prevent proceedings being instituted for a breach of the duty or the liability.

9 Examination of persons concerned with Corporation

- (1) If it appears to the Attorney General that:
 - (a) a person who has been concerned, or taken part, in the Corporation's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the Corporation, or
 - (b) a person may be capable of giving information in relation to the Corporation's management, administration or affairs,the Attorney General may apply to the Supreme Court or the District Court for an order under this clause in relation to the person.
- (2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the Corporation's management, administration or affairs.
- (3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.
- (4) The court may give directions about:
 - (a) the matters to be inquired into at the examination, and
 - (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).
- (5) The person must not fail, without reasonable excuse:
 - (a) to attend as required by the order, or
 - (b) to continue to attend as required by the court until the completion of the examination.Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (6) The person must not fail to take an oath or make an affirmation at the examination.
Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (7) The person must not fail to answer a question that the person is directed by the court to answer.
Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

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- (9) The person must not, without reasonable excuse, contravene a direction under subclause (8).
Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.
- (11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.
Maximum penalty: 500 penalty units or imprisonment for 5 years.
- (12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.
- (13) If:
- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty, and
 - (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty,
- the answer is not admissible in evidence against the person in:
- (c) a criminal proceeding, or
 - (d) a proceeding for the imposition of a penalty,
- other than a proceeding for an offence against this clause or another proceeding in relation to the falsity of the answer.
- (14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.
- (15) Subject to subclause (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.
- (16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.
- (17) The court may adjourn the examination from time to time.
- (18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

10 Power to grant relief

- (1) This clause applies to a director, the chief executive officer or an employee of the Corporation.
- (2) If, in a proceeding against a person to whom this clause applies for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, it appears to the court that:
 - (a) the person is or may be liable for the negligence, default or breach, but
 - (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach,the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.
- (3) If a person to whom this clause applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, the person may apply to the Supreme Court or the District Court for relief.
- (4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.
- (5) If:
 - (a) a proceeding mentioned in subclause (2) is being tried by a Judge with a jury, and
 - (b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subclause be relieved (in whole or part) from the liability sought to be enforced against the person,the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate.

11 False or misleading information or documents

- (1) In this clause:

officer of the Corporation means:

 - (a) a director of the Corporation, or
 - (b) the Corporation's chief executive officer, or
 - (c) an employee of the Corporation.

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- (2) An officer of the Corporation must not:
- (a) make a statement concerning the affairs of the Corporation to another officer or the voting shareholders that the first officer knows is false or misleading in a material particular, or
 - (b) omit from a statement concerning the Corporation's affairs made to another officer or the voting shareholders anything without which the statement is, to the first officer's knowledge, misleading in a material particular.
- (3) An information or complaint against a person for an offence against subclause (2) (a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.
- (4) An officer of the Corporation must not give to another officer or the voting shareholders a document containing information that the first officer knows is false, misleading or incomplete in a material particular without:
- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete, and
 - (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty:

- (a) if the contravention is committed with intent to deceive or defraud the Corporation, creditors of the Corporation or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
- (b) in any other case—100 penalty units.

12 Notice of suspected insolvency otherwise than because of direction or notification

- (1) If:
- (a) the Board suspects that the Corporation or a subsidiary of the Corporation is, may be, will or may become insolvent, and
 - (b) in the Board's opinion, compliance with a direction or notification given by the voting shareholders is not or would not be the cause or a substantial cause of the suspected insolvency,
- the Board must immediately give written notice to the voting shareholders of:
- (c) the suspicion, and
 - (d) its reasons for the opinion.
- (2) The notice must state that it is given under this clause.

- (3) If the voting shareholders are satisfied that the Board's suspicion is well-founded, the voting shareholders must immediately give the Board the written directions that the voting shareholders consider necessary or desirable, including any directions necessary or desirable to ensure:
 - (a) that the Corporation or subsidiary does not incur further debts, or
 - (b) that the Corporation or subsidiary will be able to pay all its debts as and when they become due.
- (4) Without limiting subclause (3), a direction under this clause may require the Corporation or any of its subsidiaries to cease or limit particular activities.
- (5) The Board must ensure that a direction under this clause is complied with in relation to the Corporation and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
- (6) This clause is in addition to, and does not limit, another provision of this Act or another law.

13 Application of Corporations Act 2001 of the Commonwealth to officers of Corporation subsidiaries

- (1) In determining for the purposes of the *Corporations Act 2001* of the Commonwealth the degree of care and diligence that a reasonable person in a like position in a subsidiary of the Corporation would exercise in the circumstances of the subsidiary concerned, regard must be had to:
 - (a) the application of this Act to the Corporation and subsidiary, and
 - (b) relevant matters required or permitted to be done under this Act in relation to the Corporation and subsidiary,including, for example, any relevant directions, notifications or approvals given to the Corporation by the Corporation's voting shareholders or constituent councils.
- (2) This section has effect despite the *Corporations Act 2001* of the Commonwealth.

Schedule 7 Amendment of other Acts

(Section 61)

7.1 Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1] Section 3 Definitions

Insert “, water supply authority” after “state owned corporation” in the definition of *government agency* in section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

water supply authority has the same meaning as it has in the *Water Management Act 2000*.

[3] Section 24F Regulatory functions of Tribunal

Insert after section 24F (d):

(d1) section 51 of the *Central Coast Water Corporation Act 2006*, and

[4] Section 24FC Licence auditing functions of Tribunal

Insert after section 24FC (1) (c):

(c1) its functions in connection with operational audits under section 52 of the *Central Coast Water Corporation Act 2006*, and

[5] Schedule 1 Government agencies for which Tribunal has standing reference

Omit “constituted under the *Water Management Act 2000*” from the matter relating to water supply authorities.

7.2 Water Management Act 2000 No 92

[1] Section 286 Constitution of water supply authorities

Insert after section 286 (5):

(6) The Governor may, by proclamation published in the Gazette, omit the name of a water supply authority from Part 4 of Schedule 3.

(7) The regulations may make provision of a savings or transitional nature consequent on a proclamation under subsection (6).

[2] Schedule 3 Water supply authorities

Omit the following from Part 2 of Schedule 3:

Gosford City Council

Wyong Council

[3] Schedule 3, Part 3

Omit “Australian Inland Energy Water Infrastructure”.

Insert instead “Country Energy”.

[4] Schedule 3, Part 4

Insert after Part 3 of Schedule 3:

Part 4 Council owned corporations

Central Coast Water Corporation

Schedule 8 Savings, transitional and other provisions

(Section 62)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Previous acts, matters or things

- (1) Any act, matter or thing that, before the Corporation became a water supply authority, had been done by either of the constituent councils, in its capacity as a water supply authority, continues to have effect as if it had been done by the Corporation.
- (2) Subject to any restrictions imposed by or under this or any other Act, the Corporation may vary or revoke any act, matter or thing so continued.

3 Existing development applications and other matters

- (1) This clause applies to development or an activity relating to:
 - (a) buildings, works or other infrastructure transferred to the Corporation from the constituent councils under this Act, or

- (b) a function conferred on the Corporation under this Act that was, immediately before its conferral, conferred on a constituent council.
- (2) A development application relating to a matter referred to in subclause (1) that, before the date on which:
 - (a) the relevant building, work or other infrastructure was transferred to the Corporation, or
 - (b) the relevant function was conferred on the Corporation, had been made by a constituent council under the *Environmental Planning and Assessment Act 1979*, but had not been finally determined, is taken to have been made by the Corporation.
- (3) An environmental impact statement relating to a matter referred to in subclause (1) that, before the date on which:
 - (a) the relevant building, work or other infrastructure was transferred to the Corporation, or
 - (b) the relevant function was conferred on the Corporation, had been prepared by a constituent council under the *Environmental Planning and Assessment Act 1979*, but had not been considered, is taken to have been prepared by the Corporation.

4 Licences and other authorisations

- (1) This clause applies to an authorisation granted to a constituent council under any of the following Acts or under a regulation under any of those Acts, and in force immediately before the commencement of this clause:
 - (a) the *Environmental Planning and Assessment Act 1979*,
 - (b) the *Occupational Health and Safety Act 2000*,
 - (c) the *Protection of the Environment Operations Act 1997*,
 - (d) the *Water Act 1912*,
 - (e) the *Water Management Act 2000*,
 - (f) any other Act prescribed by the regulations.
- (2) An authorisation is, to the extent that it relates to transferred functions or assets, taken to be held by the Corporation on the same terms and conditions as the constituent council held the authorisation immediately before the commencement of this clause.
- (3) The regulations may exempt an authorisation from the operation of this clause.
- (4) Nothing in this clause prevents an authorisation from being varied, cancelled or replaced.

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- (5) In this clause:
authorisation includes a licence, permit or approval.
transferred functions or assets means functions conferred on, or assets, rights or liabilities vested in, the Corporation by or under this Act, that were, immediately before the conferral or vesting, conferred on, or vested in, the Ministerial Corporation, the State or a public or local authority.

5 Deemed licences and approvals

- (1) For the purposes of Part 9 of the *Water Act 1912*, the Corporation is taken, at the time of transfer, to have been granted a water management licence under section 188 of that Act, for each water management work transferred to the Corporation by or under this Act (**a deemed water management licence**).
- (2) A deemed water management licence does not authorise the Corporation to take and use water from any water source.
- (3) The Ministerial Corporation is not required to comply with section 189 (3) of the *Water Act 1912* in relation to any condition that it imposes on a deemed water management licence within 6 months after the date that the licence is taken to have been granted.
- (4) If water management works are transferred to the Corporation by or under this Act, the Corporation is taken on the date of the transfer to have been granted all relevant approvals under Part 3 of Chapter 3 of the *Water Management Act 2000* required to allow the Corporation to use those works in accordance with the Corporation's functions (**a deemed approval**).
- (5) A deemed approval is subject to the provisions of the *Water Management Act 2000* as if the approval had been granted under Division 2 of Part 3 of Chapter 3 of that Act at the time of the transfer of the relevant water management works, and accordingly it may be subjected to conditions, suspended or cancelled in accordance with that Act.
- (6) The Minister administering the *Water Management Act 2000* is not required to comply with section 102 (1) of that Act in relation to any discretionary condition imposed on a deemed approval within 6 months after the date that the approval is taken to have been granted.
- (7) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of a deemed water management licence or a deemed approval.

- (8) The Corporation is taken to hold any other licence or approval necessary under the *Water Management Act 2000* or the *Water Act 1912* to allow it to take and use water in the exercise of its functions.
- (9) Any licence or approval under subclause (8) is taken to have effect for a period of 12 months commencing on the date of commencement of this clause or for such longer period as may be prescribed by the regulations.

6 Continuation of certain IPART determinations

The regulations may, in either unmodified or in modified form, apply to the Corporation, on and from the date on which it becomes a water supply authority, any pricing determination that, immediately before that date, applied to either or both of the constituent councils in their capacity as water supply authorities.

7 Security of employment for staff of constituent councils

- (1) The employment of any member of staff of a constituent council (other than a senior staff member within the meaning of the *Local Government Act 1993*) must not be terminated on the grounds of redundancy arising from:
 - (a) the exercise by the Corporation of functions formerly exercised by the council, or
 - (b) the proposed exercise by the Corporation of functions currently exercised by the council.
- (2) This clause ceases to have effect on the third anniversary of the commencement of section 4.

[Second reading speech made in—
Legislative Assembly on 24 October 2006
Legislative Council on 15 November 2006]

BY AUTHORITY